

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

TINA BELL,)	
)	
Plaintiff,)	
)	
v.)	No. 1:22-cv-02026-JPH-MPB
)	
FAST TRACK PHYSICAL THERAPY LLC,)	
)	
Defendant.)	

ORDER DENYING LEAVE TO AMEND

Plaintiff, Tina Bell, brought this action in October 2022, alleging that her employer, Defendant Fast Track Physical Therapy, failed to pay her overtime wages and retaliated against her. Dkt. 1. When Fast Track moved to dismiss the complaint, dkt. 12, Ms. Bell filed an amended complaint as a matter of course, dkt. 16. *See* Fed. R. Civ. P. 15(a)(1). Fast Track then moved to dismiss the amended complaint, dkt. 21, and Ms. Bell filed a motion for leave to file a second amended complaint, dkt. 26. *See* Fed. R. Civ. P. 15(a)(2). Fast Track opposes the motion for leave to amend, arguing that amendment would be futile. Dkt. 27.

The amended complaint and the proposed second amended complaint are identical except the additional allegation that "Defendant terminated Plaintiff's employment because she engaged in activity protected by the FLSA." Dkt. 26-2 at 7; *see* dkt. 16. The amended complaint already alleges that Ms. Bell had been terminated after complaining that she was not being paid for all of her hours. Dkt. 16 at 4. The proposed second amended complaint would

therefore add only a legal conclusion, which is "not entitled to be assumed true at the pleading stage." *Ass'n of Am. Physicians & Surgeons, Inc. v. Am. Bd. of Med. Specialties*, 15 F.4th 831, 834 (7th Cir. 2021) ("Repetition cannot substitute for factual allegations.").

The proposed second amended complaint therefore would not affect the viability of Ms. Bell's claims or the pending motion to dismiss, so the motion for leave to amend is **DENIED**. Dkt. [26]. Ms. Bell **SHALL RESPOND** to the motion to dismiss, dkt. 21, **by March 24, 2023**.

SO ORDERED.

Date: 3/14/2023



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

All electronically registered counsel.